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M/S41-SJ  
1109 MCKAY DRIVE  
SAN JOSE, CA 95131

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**JUN 12 2008**

**OFFICE OF PETITIONS**

In re Application of	:	
Kevin R. Boyle, et al.	:	
Application No. 10/523,429	:	ON PETITION
Filed: January 28, 2005	:	
Attorney Docket No. GB 020122	:	

This is a decision on the petition under 37 CFR 1.137(b), filed February 12, 2008, to revive the above-identified application.

There is no indication that the petition is signed by a registered patent attorney or patent agent of record. However, in accordance with 37 CFR 1.34, the signature of Mr. Michael J. Ure appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely reply to the non-final Office action mailed July 3, 2006, which set a three month shortened statutory period for reply. No extensions of time having been obtained pursuant to 37 CFR 1.136(a), this application became abandoned on October 4, 2006. It is noted that, while applicant submitted an amendment on January 3, 2007, without an appropriate 3-month extension of time, a Notice of Non-Compliant Amendment was mailed on January 12, 2007. A Notice of Abandonment was subsequently mailed on May 30, 2007. In response, on February 12, 2008, the present petition was filed, along with a 3-month petition for extension of time.

Extensions of time under 37 CFR 1.136 are available only if asked for prior to or with the response. In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for

response has expired. Since, no extension of time fees are due on a petition for revival, petitioner is entitled to a refund of the \$1,050 extension fees included with this petition.

Any request for refund must include a copy of this decision and be mailed to Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450 or faxed to the Customer Service Help Desk at (571) 273-6500.

A grantable petition under 37 CFR 1.137(b)<sup>1</sup> must be accompanied by: (1) the required reply,<sup>2</sup> unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D).

The petition lacks the required reply. In this regard, no further response was filed to the outstanding Office action, other than an improper extension of time request, and the amendment filed January 3, 2007, is shown to be non-compliant. Accordingly, the petition fails to comply with item (1) above.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                      Mail Stop PETITION  
                                    Commissioner for Patents  
                                    Post Office Box 1450  
                                    Alexandria, VA 22313-1450

By hand:                     U.S. Patent and Trademark Office  
                                    Customer Service Window, Mail Stop PETITION  
                                    Randolph Building  
                                    401 Dulany Street  
                                    Alexandria, VA 22314

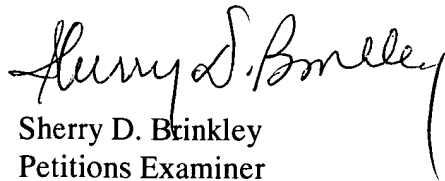
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<sup>1</sup> As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

<sup>2</sup> In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

The centralized facsimile number is **(571) 273-8300**.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

A handwritten signature in black ink, appearing to read "Sherry D. Brinkley". The signature is fluid and cursive, with a long vertical stroke extending downwards from the end of the name.

Sherry D. Brinkley  
Petitions Examiner  
Office of Petitions